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REMARKS

In order to emphasize the patentable distinctions of Applicant's invention over the prior art, claim 1, as well as claims 2, and 4 – 13 dependent thereon, have been amended to further require that the questions relating to business practices comprise management structure, reporting structure, internal communications procedures, safety and labor management practices questions. Amended claims 1, 2, and 4 – 13 further require that the questions relating to financial practices comprise current projects, funding, and gross margins and close out procedures questions. Moreover, claim 1, as well as claims 2, 4 – 13 dependent thereon, require that the mapping means for studying the answers comprise examining the answers and correlating them to determine matches, discrepancies and inadequate details, which in turn is used for structuring the on-location assessments. Old claim 3 included this limitation, and thus same has been cancelled. Additionally Applicants' claims 1 – 13 have been amended to require that the reporting means provides a grade indicative of the contractor's rank and generates of a comparative report that provides a listing of key risk factors and highlights the business, financial practices and risk factors of the contractor in comparison. The amended claims further require that the risk factors assessed include operational structure, marketing of new projects, current projects, details of project execution, safety procedures, statutory compliance, project administration, mediation / arbitration procedures and past litigation. The amendments to claims 1, 2, 4 – 13 is clearly supported by the original specification, particularly at: page 19, lines 20 – 22; page 20, lines 21 – 23; page 21, lines 1 – 22; page 22, lines 1 – 14; Fig. 3a – 3c; and Fig. 4a – 4d.

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Surety risk predication based on operational and financial practices of building contractors is currently difficult to determine as building contractor's financial and operational practices are unique in that they are highly sensitive to changing conditions.

The combination of features required by Applicants' amended claims 1, 2, and 4 – 13 provides a system that concisely determines a builder contractor's business and financial practices in a manner so that financial institutions can rely on the information when providing lines of credit to a contractor. An objective evaluation of a contractor's risk value for surety and lending institutions is achieved through the combination of features required by Applicants' present claims. Specifically, the approach of surveying candidates from different organizational levels provides a multifaceted, accurate representation of the daily practices of the contractor's business. Moreover, the on-location assessment of the candidates selected by way of the mapping means through examining answers and correlating them to determine matches, discrepancies and inadequate details, enhances the quality of the process in assuring a highly accurate certification determination which sureties can comfortably rely upon.

Unlike manufacturers or suppliers where process steps are repetitive and the output of a machine or person is easily determined after the initial manufacturing run, construction projects are non-repetitive and difficult to measure. There is more reliance placed on the skill of the operator responsible for completing the steps in construction because the operator has to modify process each time to accommodate variables. In manufacturing processes these variables are not encountered after a process has been established. Therefore, coordination, planning, communication, and technical knowledge have a much greater affect on the ultimate outcome of the project in cost and quality.

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Evaluation of the effectiveness of these systems in the construction industry can provide a far more accurate indicator of potential problems than a similar evaluation in a repetitive / controlled manufacturing environment.

The Examiner has repeated the previous rejection of claims 1 – 13 under 35 USC §103(a) as being unpatentable over US Patent No. 5,765,138 to Aycock et al. in view of GuruNet's "Business Evaluation Statements" (hereinafter, "GuruNet"), further in view of US Patent Application No. 2002/0099586 A1 to Bladen et al.

Applicants submit that none of Aycock et al., GuruNet, or Bladen, taken alone or in combination, teach all the claim limitations of Applicants' amended claims 1, 2, and 4 – 13. Accordingly, reconsideration of the rejection of claims 1, 2 and 4 – 13 under 35 USC §103(a) as being unpatentable over the combination of Aycock et al., GuruNet, and Bladen et al. is respectfully requested.

As amended, claim 1, as well as claims 2, 4 – 13 dependent thereon, discloses a contractor certification system that requires a survey means comprising a questionnaire be given to selected candidates within different organizational levels of a contractor's business. Selected candidates required to be given the questionnaire include workers, foremen, project managers, engineers, and principals so that the questionnaires are provided to representative segments of the building contractor's business. These workers, foremen, project managers, engineers, and principals provide multifaceted answers to the questions so that the questions optimally yield answers concerning information detailing the contractor's business and financial practices. Answers given by

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the selected candidates representing different organization levels within the business are gathered and used for assessing the contractor's business and financial practices by an independent third party. The Examiner has stated that it has been admitted as prior art that it is old and well known to administer surveys/questionnaires to people with sufficient knowledge and authority. However, even if same is admitted, it is not "old and well known" in the art to administer a survey to a full range of individuals including workers, foremen, project managers, engineers, and principals. Even further, Applicants maintain that while it may be known in the art to administer surveys to people with sufficient knowledge and authority, it is not known in the art to administer a given survey to a full gamut of candidates throughout all levels of an organization to determine financial and operational practices as is required by Applicants' claims 1 – 13. In other words, the definition of whom; specifically, those "people with sufficient knowledge and authority", is not known in the art. Applicants have found that a survey that questions not only managers and principals, but workers, foremen, project managers and engineers yields a multifaceted analysis of the intricacies of the business and financial practices which would not be a "known" method of surveying but for Applicant's own disclosure.

Applicants' amended claims further require that the questions in the questionnaire go to the business practices, flushing out management structure, reporting structure, internal communications procedures, safety and labor management practices, and financial practices, flushing out current projects, funding, gross margins and close out procedures questions. Applicant's response of December 18, 2006 submitted that the evaluation metrics of Aycock et al. are not indicative of business practices, but are merely

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indicative of a technical ability of a supplier to supply a given product and to therefore act as a vendor for same. The Examiner disagreed with Applicant's conclusion, and asserts that design, production, serviceability and reliability are metrics indicative of "business practices", and production and distribution are also (indirect) measures of financial practices.

The Examiner noted that no special definition of the terms "business practice" or "financial practice" have been set forth by the specification, and therefore the Examiner has broadly interpreted same as being directed towards measures reflecting operations/processes (i.e. quality, production and design control measures, etc.) of the contractor being evaluated and "financial practices" has been broadly interpreted as being directed towards measures reflecting financial aspects (i.e. collecting receivables, budgeting, cost analysis, ..etc.). In order to expedite prosecution of this application, Applicants have amended claim 1, as well as claims dependant thereon, to clearly require specific questions relating to the business and financial practices of the contractor, as supported by the original specification, particularly at pages 20 – 21 and Figs. 2 and 3a – 3c. Neither Aycock et al., nor GuruNet question or evaluate business and financial practices as defined by Applicant's specification and required by the currently amended claims.

It is respectfully submitted that the evaluation metrics of Aycock et al. are not indicative of business practices, but are merely indicative of a technical ability of a supplier to supply a given product and to therefore act a vendor for same. Aycock et al. teaches an apparatus and method for providing an interactive evaluation of suppliers used to analyze supplier capabilities in order to qualify a supplier as a vendor for a project.

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The system is a supplier self-evaluation system whereby vendor requirements are selected and assigned relative weight on the basis of project objectives and wherein supplier responses are assigned a scaled score on the basis of corresponding vendor responses so that a supplier maturity level is calculated. These standards are not indicative of a contractor's risk value for surety and lending institutional purposes unlike the questions required by Applicants' present claims. Instead, these technical specifications are established in order to determine quality assurance, and basically evaluate the supplier as to the quality of the work, the price the work is offered at, and the availability.

Assessment statements taught by GuruNet are basically subjective, self assessments statements, rather than questions, requiring a 1 – 10 score. GuruNet does not establish financial information that can be utilized by a lender as a basis for support of critical financial lending decisions. Therefore, any combination of Aycock et al. and GuruNet would not yield in-depth financial practices of a contractor that could be relied upon by a lender in securing credit.

Applicants' current claims 1, 2, and 4 – 13 require mapping means for studying the answers provided to the questionnaire be utilized in selecting on-location job site visits and candidates for interviews, and that the mapping means involve examination and correlation of the answers to determine matches, discrepancies and inadequate details. On-location assessment means comprise asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures. Additionally, assessment means further includes

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visitation of active job sites at which the contractor is involved. From the survey and on-location assessment means there is carried out a comparison means for assessing the contractor's business and financial practice. This provides a basis for ranking the contractor in comparison with industry standards and providing a grade indicative of the contractor's rank.

The mapping means of Applicants' current claims requires studying selected candidates answers provided to said questionnaire to select job site visits and candidates for interviews, and that the mapping means comprises examining and correlating the answers to determine matches, discrepancies and inadequate details (which was claimed in old claim 3, which has been cancelled). From this examination, the on-site interview process is structured.

Applicants' amended claims require on-location assessment means for determining business and financial practices at the contractor's operations. This on-location assessment of Applicants' amended claims requires asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures, and involves visiting several active job sites at which the contractor is involved. It is Applicant's position that Aycock et al. does not teach a method that utilizes on-location assessment upon compiling answers and correlating matches, discrepancies, and inadequate information, as is required via the mapping means of Applicants' claims 1, 2, and 4 – 13. That is to say, in Aycock et al. on-location assessment is merely carried out when or if a supplier is not approved or automatic approval cannot otherwise be given – the on-location assessment

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is not carried out when or if the supplier is approved. Therefore, Applicants submit that Aycock et al. does not provide on-location and on active project site auditing automatically / or in every case. Rather, the Aycock et al. teaching only calls for on-site assessment when a supplier cannot or is not automatically approved; as a result, the on-site assessment of Aycock et al. is not utilized to verify matched answers or discrepancies as is required by Applicants' amended claims 1, 2, and 4 – 13. The Examiner states that Bladen et al. teaches on-location assessments. However, Applicants argue that the auditing may involve several sites, but access is via electronically and does not involve on-location auditing by a third party. That is to say, audit information collected for each of the plurality of sites of a company is considered when conducting the audit via information for the entire company is compiled.

Applicants' amended claims further require that the reporting means provides a ranking and a comparative report listing key risk factors concerning building contractors and compares and highlights the business, financial practices and risk factors of the contractor. Key risk factors include operational structure, marketing of new projects, current projects, details of project execution, safety procedures, statutory compliance, project administration, mediation / arbitration procedures and past litigation. The Examiner has stated that Bladen et al. teaches a risk assessment system using mapping means via benchmark scoring of the audit against international standards and trend analysis graphs. Unlike a simple graph, the comparative report required by Applicants' currently amended claims involves clearly setting forth risk factors specifically associated

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with the contract business, and setting forth a building contractors position relative to these risks so that a lender can readily make the loan determination.

The combination of the features required by Applicants' current claims 1, 2, and 4 – 13 are not disclosed, either alone or in combination, by Aycock et al., GuruNet, or Bladen et al.

Accordingly, reconsideration of the rejection of claims 1, 2 and 4 – 13 under 35 USC §103(a) as being unpatentable over the combination of Aycock et al., GuruNet, and Bladen et al. is respectfully requested.

Claims 2 – 13 have been rejected by the Examiner under 35 U.S. C. §103(a) as being unpatentable over Aycock et al. in view of GuruNet, and further in view of Bladen et al. Claim 2, and 4 - 13 depend from currently amended claim 1, which is submitted to be patentable for the reasons set forth hereinabove. Inasmuch as claims 2, and 4 – 13 contain all the limitations of independent amended claim 1, it is submitted that these dependent claims are also patentable over the combined teachings of Aycock et al., GuruNet and Bladen et al.

Accordingly, reconsideration of the rejection of claims 1, 2 and 4 – 13 under 35 USC §103(a) as being unpatentable over the combination of Aycock et al., GuruNet, and Bladen et al. is respectfully requested.

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Examiner's Official Notice -

The Examiner has asserted Official Notice on a number of facts, setting forth that

"It is old and well known in the art":

1. to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses;
2. that evaluations of a business (including financial and business practices, can be used for a plurality of applications, such as establishing insurance premiums or loans of credit;
3. that surety underwriting process involves the analysis of financial, credit, and organizational capabilities of an organization....;
4. that certifications are not indefinitely earned, but rather are distinctions of accomplishment over a specific period of time that become invalid and require renewal after a predetermined period of time;
5. that results derived from a questionnaire or auditing process are quantifiable and therefore allows a number of statistical means, including graphs, to be used in an analysis or comparison;
6. that graphical representations of data can be used as a method of comparison;
7. that concepts and advantages of providing for displays which recognize a contractor's services exceeding industry standards is old and well known in the art;
8. contractors who receive recognition or certification would adapt symbols of recognition, certification, or similar awards for use in promotion of their business whether it be on stationary, the company website, or other mediums of advertising;
9. contractors (and firms) subjecting themselves to assessment, evaluation or certification will receive some sort of notification (usually in written form) regarding their performance;
10. process and project execution practice are measures that are vital components in defining a company's management practices and an evaluation of these practices would be needed to formulate a comprehensive assessment that can be sued to company the company with other companies.

Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionably demonstration as being well-known. TMEP 2144.03A. In *limited circumstances*, it is appropriate for an examiner to take

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Official Notice of facts not in the record or to rely on “common knowledge” in making a rejection; however, such rejections should be judiciously applied. MPEP 2144.03. It is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) („Conclusory statements ... do not fulfill the agency’s obligation.... The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rational on which it relies”).

Applicants respectfully submits that certain conclusory statements set forth by the Examiner over-extend permissible conclusions based on Official Notice because the Specifically, Official Notices 7 – 9 (herein numerated above) particularly go toward contractors – such as “concepts and advantages of providing for displays which recognize a contractor’s services exceeding industry standards is old and well known in the art”, ; “contractors who receive recognition or certification would adapt symbols of recognition, certification,”; and “contractors (and firms) subjecting themselves to assessment, evaluation or certification will receive some sort of notification ...”. However, these statements, as applied to CONTRACTORS, are not capable of instant and unquestionable demonstration as being well-known. Firstly, currently, the Construction Industry does not have any set standards, there is no standard for contractors in the public sector except a low bid and a surety bond; currently there is no recognition or certification system in place for contractors; and there is not assessment evaluation or certification process or notification for contractors. These specific, as to

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CONTRACTORS, so called "old and well known" facts currently do not exist in the building contractor business, and are "known" only in light of Applicant's invention as defined by claims 1 – 13. Risks associated with building contractor businesses are great; there is a need in the art for a system which would provide a way for surety institutions to lend funds to a builder with mitigated risk. Year after year surety institutions report losses associated with lending to contractors. Applicant's novel system fulfills this need and yields a more secure environment for lending money to the contractors.

Despite the Official Notices taken, Applicants submit that neither the references, alone nor in combination, or in combination with the Official Notices taken, disclose Applicant's system with the features required by amended claims 1, 2, and 4 – 13.

Accordingly, reconsideration of the rejection of claims 1, 2 and 4 – 13 under 35 USC §103(a) as being unpatentable over the combination of Aycock et al., GuruNet, and Bladen et al. and the Official Notices is respectfully requested.

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CONCLUSION

In view of the amendments to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration and allowance of claims 1 – 13, as amended, are earnestly solicited.

Respectfully submitted,
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